

APPEAL FROM ORDER No 342 of 1997
WITH
CIVIL APPLICATION NO.6287 OF 1997
AND
CIVIL APPLICATION NO.6376 OF 1997

Hon'ble MR.JUSTICE M.S.SHAH

1. Whether Reporters of Local Papers may be allowed to see the judgements? No

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4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

TARABEN KALIMUDDIN MULLA MITHAWALA

Versus

SHANTABEN WD/O MANHARLAL R CHAUHAN

Appearance:

MR SURESH M SHAH for the Appellants.

MR PM THAKKAR of M/S THAKKAR ASSOCIATION
for the Respondents.

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 18/07/97

ORAL JUDGEMENT

This appeal by the original plaintiffs is directed against the judgment and order dated July 1, 1996 passed by the Civil Judge (S.D.) at Godhra below Exhs.5 and 33 in Special Civil Suit No.108 of 1996. In this judgment, appellants and respondents are referred to as plaintiffs and defendants respectively.

2. The plaintiffs filed the present suit in August 1996 praying for a declaration that the sale deed executed by defendants Nos.1 & 2 in favour of defendants Nos.3 & 4 on August 5, 1996 is illegal, null and void and also for a permanent injunction that the defendants be restrained from interfering with the plaintiffs' possession and enjoyment of the land admeasuring 1532.14 square metres out of the land bearing Final Plot No.109 (Revenue Survey No.59) at Dahod, Panchmahal District. During the pendency of the suit, the plaintiffs also submitted an application at Exh.5 praying for an interim injunction that pending the suit the defendants be restrained from interfering with the plaintiffs' possession and enjoyment of the suit land being Plot Nos.1 to 5 admeasuring 1532.14 square metres in aggregate situate on the western side of Final Plot No.109 (Revenue Survey No.59) of Dahod.

3. In response to the notice issued by the trial court, defendants Nos.3 & 4 submitted their reply contesting the interim injunction application and also filed an application at Exh.33 contending that defendants Nos.3 & 4 had purchased the land admeasuring 3883.73 square metres which was the remaining portion of the land bearing Final Plot No.109 and praying that the plaintiffs were required to be restrained from interfering with possession and enjoyment by defendants Nos.3 & 4 of their

land admeasuring 3883.73 square metres.

4. After hearing the parties and considering the documentary evidence on record and also the map prepared by the District Inspector of Land Records (hereinafter referred to as the DILR) on April 10, 1997, the trial court has passed the impugned interim order restraining the defendants from interfering with the possession and enjoyment by the plaintiffs over the land admeasuring 1532.14 square metres in Plot No.109/A and a similar injunction has also been granted in favour of defendants Nos.3 & 4 restraining the plaintiffs from interfering with the possession and enjoyment by defendants Nos.3 & 4 over the land in Final Plot No.109/B. The reference to the said plot numbers is as per the location of the two parcels of land in the map prepared on April 10, 1997 by the DILR.

5. Mr.Shah, learned Counsel for the appellants (plaintiffs), has challenged the aforesaid order on the following grounds:

(a) While the trial court rightly granted interim injunction in favour of the plaintiffs in respect of the land admeasuring 1532.14 square metres, the trial court should not have made any reference to the plot number since the plaintiffs' case is not based on any map or any such plot number but it is only based on the sale deed executed in favour of the plaintiffs;

(b) Even otherwise, the map prepared by the DILR is not correct as the same is not in conformity with the boundaries described in the sale deed executed in favour of the plaintiffs in 1996 and was also not in conformity with the documents at Marks 3/8 and 3/10.

(c) The trial court also erred in granting the application at Exh.33 in favour of defendants Nos.3 & 4, because such an application filed in the appellants' suit could not have been entertained by the trial court.

(d) Even otherwise, the trial court should not have granted any relief in favour of the defendants with reference to the map prepared by the DILR.

6. On the other hand, Mr.Thakkar, learned Counsel for the respondents, has submitted as under:

- (i) In view of the disputes raised by the plaintiffs, this court was earlier required to pass an order on March 26, 1997 for appointing a Court Commissioner to prepare a map and that both the parties were given ample opportunity to produce documents in support of their case and after site inspection and after considering all the relevant material, the DILR has prepared the map.
- (ii) Demarcation of two parcels of land out of Plot No.109 as 'A' and 'B' was also done by the City Survey Officer as per the document at Mark 49/1 and the DILR has adopted the same demarcation for the purpose of designating the plots as 109/A and 109/B.
- (iii) Since the plaintiffs themselves had raised the dispute about exact location of the land, it was necessary for the trial court to specifically refer to the two different parcels of land and also to pass orders against both the parties so that there is no subsequent confusion and disputes between the parties during pendency of the suit.
- (iv) The plaintiffs themselves have described their land in the relief clause below Exh.5 to the effect that the plaintiffs' land is on the western side of Plot No.109 and that the plaintiffs themselves have described at page 2 of Exh.5 that on the western side of the plaintiffs' land there is Final plot No.5 (Old Survey No.60/A & 60/B). The map prepared by the DILR is, therefore, consistent with the case of the plaintiffs themselves.
- (v) While producing before this court the report dated April 17, 1997 along with the map, the DILR has also submitted a statement signed by both the sides on April 10, 1997 to the effect that location and measurements of the lands of the parties were taken as per the actual site conditions.

7. In view of the above, the learned Counsel for the respondents submitted that the appeal deserves to be dismissed.

8. Having heard the learned Counsel for the parties at length, I am of the view that there is sufficient material on record to justify the conclusion arrived at

by the trial court that the land earmarked as Plot No.109/A in the map prepared by the DILR is of the ownership of the plaintiffs and that the other land being plot No.109/B belongs to defendants Nos.3 & 4.

The contention of Mr.Shah that the injunction order should be in terms of the prayer made by the plaintiffs and not with reference to plot numbers cannot be accepted for the simple reason that the manner in which the plaintiffs have raised the dispute about location of the land would only result in further confusion if the court keeps its order vague and does not specify the location of the respective properties.

9. The map is prepared by the DILR pursuant to the order dated March 26, 1997 passed by this court in Civil Revision Application No.300 of 1997 after hearing the learned Counsel for the parties in those proceedings, which included the present plaintiffs as well as present defendants Nos.3 & 4. The DILR was required to submit his report after visiting the suit site (i.e.the present suit land) to survey the suit land, ascertain boundaries and dimensions in accordance with the registered sale deed executed in favour of the plaintiffs as well as sale deed in favour of defendants Nos.3 & 4. It was also clarified in the order that it was open to the Officer to take assistance of plans and maps to be produced by either of the parties and he may obtain record from City Survey and other records, if any, available with the local authorities. The measurements were taken in presence of the parties and the Commissioner has prepared a detailed plan identifying the land and showing measurements and dimensions of respective properties over which ownership is claimed by the plaintiffs and defendants Nos.3 & 4. There is, therefore, no reason why the court should not take into account such material piece of evidence.

In my view, when an independent public official had prepared the map after taking measurements in their presence and when other documents on record, such as, Marks 3/8, 3/10 and 41/1 are consistent with the said map, there was sufficient material before the trial court for the purpose of deciding the applications at Exhs.5 and 33 and the trial court was, therefore, justified in passing the interim order which has given rise to the present appeal.

10. Mr.Shah has taken me through the registered sale deed dated August 18, 1989 for the purpose of contending that the plaintiffs' land is on the eastern side of Plot

No.109 and not on the western side. It is true that while describing boundaries it is mentioned that on east of the land purchased by the plaintiffs there is Final Plot No.6. It is therefore submitted that, if the plaintiffs' land was on the western portion of Plot No.109, the boundary description would have been that on the east of the plaintiffs' land there is another portion of Plot No.109.

This argument, however, does not carry the matter any further, because even the description of the western boundary in the same sale deed is to the effect that there is Final Plot No.5 (Revenue Survey No.60/A and 60/B) on the western side of the plaintiffs' land. Since the entire land of Final Plot No.109 from west to east was admittedly not purchased by the plaintiffs, it clearly appears that the boundaries described in the sale deed dated August 18, 1989 were vague in so far as they did not refer to the remaining portion of Plot No.109 either on the eastern side or on the western side. However, the sketch (Mark 3/8) annexed with the sale deed in favour of the plaintiffs shows that on the western side of the plaintiffs' land there is Final Plot No.5. The location of Final Plot No.109 in the said sketch tallies with the location of the land as described in the map prepared by the DILR and also the documents at Mark 3/10 produced by the plaintiffs and Mark 49/1 produced by the defendants. The very fact that in their application at Exh.5 (prayer clause) the plaintiffs themselves have described their land as being on the western side of plot No.109 shows that the controversy raked up by the plaintiffs is a mere afterthought.

11. It is also required to be noted that earlier the contention of the plaintiffs was that Plot No.109 did not have such area that land admeasuring 3883.73 square metres could have been sold to defendants Nos.3 & 4 in 1996 after the land admeasuring 1532.14 square metres had already been sold to the plaintiffs in 1989. The trial court has already considered the said argument and found that after the plaintiffs purchased the land admeasuring 1532.14 square metres, the original owner who was then alive had got entry made in the City Survey Record which is produced by the plaintiffs at Mark 3/11. In the said property card also, the area of the property was mentioned at 5415.87 square metres. Hence, after deducting 1532.14 square metres sold to the plaintiffs, there did remain 3883.73 square metres which is purchased by defendants Nos.3 & 4 as per the sale deed executed in 1996.

12. As regards the contention that the defendants' application at Exh.33 cannot be granted in the plaintiffs' suit, there is no such absolute bar in law. In the facts of this case, in view of the dispute raised by the plaintiffs regarding the location of their land vis-a-vis the land of defendants Nos.3 & 4, the trial court was justified in granting the application of defendants Nos.3 & 4 in the plaintiffs' suit.

13. In view of the aforesaid discussion, the order passed by the trial court does not suffer from any infirmity and the appeal deserves to be dismissed.

14. The Appeal from Order is accordingly dismissed with no order as to costs.

15. On Civil Application No.6287 of 1997, no orders are required to be passed as the appeal is dismissed.

16. Civil Application No.6376 of 1997 is dismissed since the main appeal is dismissed.

17. At this stage Mr.Shah for the appellants prays that the ad-interim relief granted by the trial court be ordered to be continued for some time to enable the appellants to have further recourse in accordance with law. In my view, all that the order dated July 1, 1997 of the trial court has done is to earmark the location of the respective lands of the plaintiffs on the one hand and defendants Nos.3 & 4 on the other hand so as to avoid any controversy or confusion and then to restrain one party from interfering with the possession of the other party. It is, therefore, not necessary to stay operation of the order of the trial court.

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